

JUST Elder Abuse Study – Submission to the Committee

Re: Crime and Abuse by Relatives and Caregivers

D Rodgers, Vancouver BC

May 2021

What we knew in 2015

The issues and concerns around elder abuse in Canada have been recognized for many years.

The Justice Department online publication: *Crime and Abuse Against Seniors: A Review of the Research Literature With Special Reference to the Canadian Situation*¹ provided a report of the situation in 2015.

According to the executive summary²: *[t]his report addressed the issue of elder abuse in Canada and internationally, including the prevalence of abuse, perpetrator and victim characteristics, crimes posing the greatest threat to seniors and gaps in research.*

While most of the findings in the report focus on violence as abuse against seniors, it notes that, *“(f)inancial abuse/exploitation and emotional abuse appear to be the most prevalent forms of abuse.”*

The report then outlines “areas of greatest vulnerability for seniors.”

The three principal areas of concern for seniors, identified in this review, are:

- 1. **Financial crimes by strangers.** A variety of fraudulent schemes fall in this category, including Ponzi schemes (investment), false promises of prizes, aggressive telemarketing, schemes involving health products, and fraudulent home repairs.*
- 2. **Crime and abuse by relatives and caregivers.** This includes the full range of crime and abuse, including physical, emotional, and sexual abuse, as well as financial exploitation and neglect. There is also the undue exercise of control, such as isolating the senior from others or interfering with his or her participation in religious services. This report covered the signs of each type of abuse.*

1 Webpage: <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/toc-tdm.html>

2 Webpage: <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/sum-som.html>

3. ***Crime and abuse in institutional settings.*** Here again, there is the full range of abuse and, in particular, physical, sexual, and emotional abuse, as well as systemic abuse.

Consequently, while the general public generally recognizes the risk of strangers committing financial crimes against seniors, and the JUST Committee is now investigating systemic abuse and neglect of seniors in institutional settings, it is critically important to also realize that the vulnerability of the elderly to abuse from people in their family and their homes is also happening and it's going to continue to happen behind closed doors until and unless we make it stop.

A late section in the Justice department report provides more detail on elder abuse by people close to the senior:

Abuse by Relatives and Caregivers

The vast majority of elder abuse incidents occur in the community and not in nursing homes or other residential settings. Elder abuse tends to occur in the home and the usual perpetrators are family members or professional caregivers. Sometimes the abuse is part of a longstanding pattern of physical and emotional abuse in the family. Often, it is related to changes in the physical and cognitive condition of seniors and their growing dependency on family members for care.

Offenders are usually considerably younger than the elderly victim. About 40 percent are under 40 years of age and another 40 percent are between the ages of 41 and 59. The majority are males and about 60 percent are relatives of the victim. There are three general categories of offenders:

1. *Adult children, grandchildren, and other relatives;*
2. *Professional caregivers; and*
3. *Close friends or others in a position of trust.*

The majority of offenders fall in the first category. [emphasis added]

Another section of the report³ generalizes on all offenders that, “*there are two basic types. The first type includes individuals who have substance abuse issues or stresses, including those stemming from the responsibility of caring for the elderly person, and who do not seek out elderly victims but will passively exploit opportunities that arise. The second type of offender seeks out vulnerable seniors and systematically gains control over their assets.*”

3 Webpage: <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/crim/p52.html>

The Executive Summary of the report also lists ‘*Gaps in Research*’ which at that time (2015) included the following factors which are relevant to familial offenders:

Perpetrators of Crime/Abuse Against Seniors – Apart from a lack of sufficient research on the perpetrators of abuse, there is a wall of silence as many forms of maltreatment are not reported to officials or even in surveys. As a result, perpetrators usually avoid detection and consequences.

Domestic Crimes/Abuse – The wall of silence surrounding cases of abuse is especially hard to penetrate in the case of domestic incidents. The underreporting of maltreatment of elderly people at the hands of family members is especially significant. Little is known about the true extent of maltreatment, the most prevalent forms, the triggers, risk factors, distinguishing characteristics of perpetrators, and all the consequences for the elderly victims.

So in 2015, based on this report, the following was known and understood to be true about elder abuse in Canada:

- Most of the offenders are family members or caregivers – people in a position of trust
- The abuse usually happens in a private residence, where the senior lives alone or with family/ the offender(s)
- The primary motivation is financial
- The offenders act either opportunistically when exposed to the vulnerability of a senior, or they are predators who prey on vulnerable seniors as an easy target
- These problem is not understood and the magnitude is unknown

Elder abuse by relatives and caregivers in BC – What’s happening in 2021

BC provides an example of lack of progress on addressing concerns about elder abuse by relatives and caregivers, as they were identified in the 2015 report.

Let’s use the common example of someone with poor financial prospects who decides to claim the assets of an elderly relative. A typical situation in Vancouver would target an aunt/uncle, parent, grandparent, who was married and their spouse has recently died, leaving them sole title of a once-modest house build in the 1960s, bought for \$40,000 now worth well over a million dollars in land value. The senior, in their eighties, is experiencing both physical and mental decline and is somewhat isolated from other family members and the community.

The following story outlines the basic strategic plan of an offending relative (OR), as they set out to take over the affairs of the elderly relative, to live off them, perhaps with them, and then take everything from them.

Step 1. Establish a relationship

The offending relative can start by visiting the senior frequently, taking them to doctors appointments, the bank, to religious services if they belong to a church or synagogue. They will encourage the senior to depend on them, picking up groceries and prescriptions, doing repairs and maintenance around the house, taking them out for a drive, to shop, for a meal, brightening their world and becoming indispensable.

Step 2. Arrange to be named on government, financial, and other paperwork

If there are pensions available, or other benefits and home supports, the OR can help the senior to apply. They can arrange to be named as the 'trusted contact person'⁴ on these services as well as bank and investing accounts, making appointments for the senior, getting to know the people they rely on for services – at the bank, at the pharmacy. The offending relative will make friends with the senior's friends and neighbours, becoming trusted by and around the senior.

Step 3. Draft an online Will, Power of Attorney, and care planning documents for the senior to sign

A few years ago, the offending relative would have been faced with the involvement of a lawyer or another legal service provider to prepare the documents necessary to take over the life and assets of a vulnerable senior. Now the three main planning documents are all available online: an Enhanced Power of Attorney to take over legal affairs, a Representation Agreement S.9 to become the legal representative for health care and related decisions, and a final Will in which the offending relative will aim to be named Executor and beneficiary.⁵ The OR can 'help' the senior complete these documents, guiding as needed on the content, then print the forms for signature by the senior with neighbours for witnesses, or finalized with the help of a lawyer who has been convinced this is a legitimate family relationship. If there are other family members with a claim on the estate, the OR can have the senior reduce rather than eliminate their inheritance, with a good cover story devised for/ with the senior as to why this happened, or alternatively the OR can include other beneficiaries and then drain the assets before the senior dies, so there is only a remnant remaining to distribute. Once named on these

4 "Motivating clients to establish trusted contact persons" (Nov. 2020) <https://www.advisor.ca/news/industry-news/motivating-clients-to-establish-trusted-contact-persons/>

5 Enduring Power of Attorney – https://www2.gov.bc.ca/assets/gov/health/managing-your-health/incapacity-planning/enduring_power_of_attorney.pdf; Enhanced Representation Agreement (S9): https://www2.gov.bc.ca/assets/gov/health/managing-your-health/incapacity-planning/representation_agreement_s9.pdf; Will: <https://mylawbc.com/paths/wills/>.

documents, the offending relative can start taking over and it will be difficult if not impossible for anyone else to interfere given the advancing age and likelihood of increasing frailty for the senior.

Step 4. Liquidate major assets/ sell the house; Take over

Liquidating assets makes the process of asset transfer much easier and simpler. Depending on the skill level of the offending relative, there are online forms⁶ available to transfer ownership of residential property privately. All that's needed is the seller's and buyer's signature and witnesses. At this point, once the senior loses title to their main asset, future housing arrangements, care plans, and decisions on who is even allowed to see the senior will all be under the close control of the offending relative, which is the purpose of having all the signed documents prepared in advance and ready to use as needed. Given their involvement in the affairs of the senior, the offender can be paying themselves a generous allowance and service charges as well as reimbursement of expenses, as a part of the process of transferring assets. So long as the asset drain is documented and the senior does not state an objection, the situation is unlikely to draw attention, especially given the history of a progressive relationship.

Step 5. Planning to the end-of-life

The offending relative could place the senior in an institution after the house is sold while continuing a steady asset drain but will have better control by setting up a stay-at-home care plan that ends with a home death for the senior. Home care arrangements are encouraged and supported by the government and health regions. There are substantial free and subsidized services available⁷ both to accommodate a preference most people have to age in place and also for the government and health regions to save space in overcrowded institutions and to keep liability and responsibility for care concerns on the family. As a family caregiver the offending relative can secure support from the physician, who is more likely than not to be glad to see an elderly patient arriving for appointments with an attentive relative driving them around and helping out with medications and test appointments. The physician community remains largely distant from concerns over elder abuse against seniors, as can be seen from the rudimentary procedure of a decision tree they use to address possibly suspicious situations.⁸

6 Contract of Purchase and Sale, BC Real Estate Association and the Canadian Bar Association BC Branch – [https://uploads-ssl.webflow.com/5f34408de024ab0b83c41c22/5f8e59e33211dab515d5dcea_CPS%20-%20Residential%20\(2\).pdf](https://uploads-ssl.webflow.com/5f34408de024ab0b83c41c22/5f8e59e33211dab515d5dcea_CPS%20-%20Residential%20(2).pdf)

7 Vancouver Coastal Health: Home Support – <http://www.vch.ca/your-care/home-community-care/care-options/home-support>

8 A yes-no 'decision tree' available from the Public Guardian and Trustee of BC for physicians who suspect that an elderly patient is being abused: <https://www.trustee.bc.ca/Documents/adult-guardianship/Decision%20Tree.pdf>

In BC, people can be entered into the palliative care program on the basis of mental or physical incapacity and dependency,⁹ so essentially on the basis of their age. Gradual withdrawal of life quality supports are likely to go under the radar with a medically vulnerable senior. Once they are in the palliative program, it's understand where this care plan is heading. No strenuous efforts are needed or expected to keep this person alive.

6. The end and afterwards

Patients enrolled in the palliative care program can be registered for an expected or planned home death by their legal representative. The following oversight bodies are among the signatories to the *Joint Protocol for Expected/ Planned Home Deaths in British Columbia*.¹⁰

- Ministry of Health; BC Ambulance Services; Office of the Chief Coroner; BC Medical Association; BC College of Physicians and Surgeons; BC Hospice Palliative Care Association; (former) Registered Nurses Association of BC; Funeral Service Association of BC; RCMP "E" Division; (former) BC Association for Community Care; BC Municipal Police Chiefs Association; (former) BC Health Association.

As explained in the Joint Protocol (page 2 of 14): *"in BC there is no legal obligation to pronounce death. However, in the absence of a pronouncement of death, funeral directors require assurance that the death was expected and planned before they will remove the body; thus, the Protocol includes a mechanism for providing this assurance through a form completed by the physician and family entitled Notification of Expected Death which is forwarded to the funeral home in advance of death."*

Consequently, with a physician's signature on a form that is filed at the office of the funeral home, the senior is enrolled into a program that will expedite the process of dealing with their remains and registering the death, and also will avoid any possibly difficult questions about how the elderly person died and what shape they were in at the time. There is no concern in this setup for the end of life experience for the senior or for any need to put safeguards in place against a negligent or malfeasant death.¹¹ Note that the form can be filled in repeatedly, year after year, while the offending relative lives off the assets and acts on whatever motives inspire them to decide if the dependent senior whose life they control will be well or ill, receiving good food in a comfortable room, or instead being shut in an airless room with no windows on a hard mattress eating small meals of bad food.

9 Palliative care enrolment form – <http://www.coastalpalliativecare.ca/wp-content/uploads/2020/06/NSPSCP-Referral-Form.pdf>

10 Joint Protocol for Expected/ Planned Home Deaths in British Columbia (2006) – https://www2.gov.bc.ca/assets/gov/health-safety/home-community-care/care-options-and-cost/expectedplanned-home-deaths/expected_home_death.pdf

11 If people are allowed to state their wishes to access MAID at a future time during mental incapacity, the date to be decided by their named health care representative, it could be the OR deciding when and how the senior they are abusing dies, and other members of the family will have no say.

If there are concerns that the physician services were negligent or inadequate, only the legal representative of the patient can complain.¹² Other than the patient, no-one else has standing to register a complaint about a physician in BC. So physicians are very clear on which members of the family matter, legally, with elderly patients.

What about nurses? As with physicians, there is no reason to expect this professional group to be helpful in identifying or addressing elder abuse by relatives or caregivers. In fact, there are notorious cases in which nurses have committed elder abuse and worse. The Wettlaufer crimes, and the fact that she was discovered to be killing elderly patients only because she confessed, demonstrate the ease with which nurses can harm their patients, with the assaults most likely going undetected and unreported.¹³ And there are cases on record of nurses taking money and other assets from elderly vulnerable patients in their care with no real consequences from police or their own regulator.¹⁴

Where is the vulnerable senior in this scenario as the OR takes over their life and their assets? The victim might be compliant, intimidated, or mostly confused as the friendly relative who came to help gradually and increasingly makes their life miserable, possibly becoming aggressive to get what they want. A skilled manipulator can manage the senior to keep others away and present the right story to various service providers and the outside world, especially if the offender and the senior are living together. As the senior might become aware that the situation is going wrong, that their needs are not being met and their safety is in jeopardy, their capacity to identify and defend their own interests will also be diminishing. The abuse and neglect erode the capacity of the senior to defend themselves against the abuse and neglect. It's a downward spiral experienced by many seniors along different paths that all end in the same place.

The non-profit, social service, and legal assistance programs mandated in BC to address elder abuse problems show little appreciation for the predicament of an increasingly frail and dependant senior being abused by a relative or caregiver. There is a surprising expectation that an abused senior in this situation will find their own help and take the initiative to 'flee' an abusive relationship.

The provincial information services on elder abuse are scattered and similarly unhelpful. A search for assistance in dealing with elder abuse on the provincial government website follows an embedded

12 *College of Physicians and Surgeons of BC* complaint Form: <https://www.cpsbc.ca/files/pdf/Complaint-Form.pdf>;
Authorization form for representative – <https://www.cpsbc.ca/files/pdf/Complaint-Authorization-for-Representation.pdf>

13 'Elizabeth Wettlaufer wouldn't have been caught if she hadn't confessed, inquiry says,' Kerri Breen, Global News, Posted July 21, 2019. <https://globalnews.ca/news/5707936/elizabeth-wettlaufer-inquiry-confession/>

14 'B.C. nurse hit with precedent-setting fine for financially exploiting elderly couple,' Pamela Fayerman, Vancouver Sun, posted February 21, 2018

path of '> *Family and social supports > Seniors > Health & Safety > Protection from Elder Abuse and Neglect.*'¹⁵

The destination page offers a long list of pdf links to information resources in various languages that would of little use to a frail senior being victimized by an offending relative.

There is a link for another page of 'Where to Get Help.'¹⁶ It offers referral to a variety of community and victim agencies and the official designated reporting agencies for elder abuse: the health regions and the Public Guardian and Trustee.

However, there are six different health regions with different elder abuse programs. The links provided on the government page go to the various health region pages for reporting care quality concerns, not for reporting elder abuse, except for one of the main health region links which goes to a '404 – Page not found' destination.

So far in this review of what's happening in BC in 2021, the role of the Public Guardian and Trustee (PGT) has not been considered with regard to elder abuse protections.

This is for several reasons:

- The PGT has a poor record for service to seniors and their families, which is indicated through an online search and a scan through the public comments.
- The public comments might be dismissed as complaints from a few people, except there is no way of knowing if they are exceptions or representative of everyone's experience. The PGT sets up their own accountability measures and there are none for services provided to incapable seniors nor are there any external reporting mechanisms for the handling of guardianship matters, only financial matters.
- Unless the abuse is obvious and can be proven in court, the PGT will not be inclined to take legal action against a relative who has been named in planning documents, especially as this person is the litigation guardian, which gives them the authority to litigate on behalf of the senior and the estate against the PGT and others.

15 Website page: <https://www2.gov.bc.ca/gov/content/family-social-supports/seniors/health-safety/protection-from-elder-abuse-and-neglect>

16 Website page: <https://www2.gov.bc.ca/gov/content/family-social-supports/seniors/health-safety/protection-from-elder-abuse-and-neglect/where-to-get-help>

- The PGT will avoid disrupting current arrangements for a senior and the courts also will not disrupt a plan put in place with the senior's signature unless there is compelling evidence.

A further problem with going to a health region or the PGT to report elder abuse concerns is the black hole of uncertainty this creates for the people reporting and the senior, because what follows in terms of investigation will be shrouded in medical and legal privacy. Then these agencies can take drastic steps on care and arrangements without consulting those closest to the senior, and without accountability for the results, except to the legal representative.

Professional conflicts of interest complicate the lack of PGT service accountability.

- The PGT uses staff and contract lawyers, creating potential conflicts of interest for these lawyers who thereafter cannot hold the PGT accountable on behalf of private elderly clients or their families.
- Complaints against the PGT are unlikely to be fairly heard because the first stage is an internal complaint followed by an appeal of the complaint which goes to the Ombuds office, and the current Ombudsperson in BC is the former Public Guardian and Trustee.

These multiple conflicts of interest associated with the Public Guardian and Trustee reflect the general lack of due diligence and fiduciary care around elder law and seniors' issues in the province.

So, rather than adding safeguards against the most prevalent type of elder abuse identified by the federal review in 2015 – financial abuse by relatives and caregivers, BC has instead created online legal planning documents which make it easier for relatives and caregivers to commit financial elder abuse, binding a web of control around the senior and their legal and financial affairs that is very difficult to reverse.

What next?

The entire adult guardianship and legal representative framework in BC needs to be rebuilt, with oversight for seniors' safety and rights taken out of the hands of lawyers and other disinterested and self-interested parties, and mandated to bodies who know the duties of a fiduciary and are publicly accountable.

In BC, this means dismantling the Public Guardian and Trustee framework which has created too many conflicts of interest to participate in meaningful progress on fixing the problems, at the same time as we redesign the institutional care system.